IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3889 OF 2005

Sukumar Estates Ltd.)
(now known as Kumar Housing)
Corporation Limited))
represented by its Authorised)
Signatory and Representative)
Mr. Viresh Shashikant Parekh)
Age 40 years, Occ. Service,)
Ofice Address: Kuman Capital,)
2nd Floor, 2413, East Street,)
Camp, Pune-411 001.)..PETITIONER

Versus

1. Mrs.Indirabai Waman Thatte)
since deceased through legal)
heir original Plff. No.2)
Mrs.Manda Sadashiv Godbole)
Age 58 years, Occ.Retired)
2.Mrs. Manda Sadashiv Godbole,)
Age 58 years, Occ. Retired,)
residing at 360-A/1, Shaniwar)
Peth,Thatte Wada, Pune-411030)
3.Mr.Bhalchandra Nagesh Thatte,)
Age 69 years, Occ. Retired,)
4.Mr. Madhusudan Nagesh Thatte,)
Age 61 years, Occ. REtired,)
5.Mr.Sharadchandra Nagesh)
Thatte, Age 58 years, Occ.)
Service,)
6.Mr.Vishnu alias Ashok Nagesh)
Thatte,Age 55 years,Occ.)
Service.)
7.Mr. Madhav Nagesh Thatte,)
Age 52 years, Occ. Service,)
8.Mrs.Suman Herambh Kolhatkar,)
Age 66 years, Occ. Household)
9.Mrs. Sushila Vasudev Divekar,)
Age 64 years, Occ. Household)
10.Mrs. Nalini Ravindra Gadgil,)
Age 47 years, Occ. Household)
)
Respondent Nos. 3 to 10)
residing at 360, Shaniwar)
Peth, Pune-411 030.)..RESPONDENTS

Mr.A.V.Anturkar with Mrs. Vinita B. Bakre-Shastry, for the Petitioner

CORAM : S.A.BOBDE, J.
DATED : 17TH JUNE, 2005

ORAL **JUDGMENT:**

. The petitioner is Defendant No.16 in a suit for partition and declaration of a property in Pune. The petitioner is arrayed as Defendant No.16 and was appointed as Receiver. Admittedly, the Petitioner has entered into an agreement to purchase the said property.

2. Initially the Petitioner was directed to give security in the sum of Rs.1.00 crore. This amount was reduced on his application to a sum of Rs.50.00 lakhs. However, the Petitioner offered property as security in lieu of the amount. This application was rejected. Eventually the Court found it appropriate to discharge the petitioner as Receiver and in his place appointed an Advocate, who has been directed to furnish security in the sum of Rs.50,000/-.

3. The petitioner has challenged both the orders (1) discharging him as Receiver and (2) directing the new Receiver i.e. the Advocate to furnish security of Rs.50,000/- only. I am of the view that there is no right in any person to be appointed as a Receiver. There is accordingly no corresponding duty on a Court to appoint a particular person as a Receiver. The Receiver acts as an agent of the Court and the property becomes in custodia legis. It is, therefore, left to the discretion of the Court to appoint any suitable person as a Receiver. A suitable person will no doubt include a party to the suit. In the circumstances there is no merit in the challenge to the order directing that the petitioners shall ceased to be

a Receiver in view of inability to furnish security of Rs.50.00 lakhs.

4. As regards the second application, I am of the view that there is no merit there either. Order 40 Rule 3 of C.P.C. to the extent it is relevant reads as under:-

> 3. Duties.- Every receiver so appointed shall--
>
> (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property.
>
> (b).....
>
> (c).....
>
> (d) ...."

According to the Petitioner since the property is the same the Court has committed an illegality and atleast an impropriety in directing the new Receiver, who is an Advocate, to only pay Rs.50,000/-. I am of the view that there is no merit in this submission in view of Rule 3 clause (a) of Order 40 of C.P.C., under which the Court may direct the Receiver to furnish security on the basis of what he shall receive in respect of the property. IN the present case there is a vast difference between the position of the petitioner, who is a party to the suit and who has entered into an agreement to purchase the property as to what he might receive from the property and what the Advocate might receive from the property. It is, therefore, not possible to compare the position of these two persons. I find no merits in the submission that the petitioner's capacity

should be split up into what he might receive as a Receiver and what he might receive as a prospective owner of the property. There is no merit in this petition, which is hereby dismissed.

(S.A. BOBDE, J.)